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BMW OF NORTH AMERICA, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARTHA ROSARIO GARCIA
VILLANUEVA, an individual,

Plaintiff,

vs.

BMW OF NORTH AMERICA, LLC, a
Delaware Limited Liability Company,
and DOES 1 through 10, inclusive,

Defendants.

Case No. 2:22-cv-09415-JFW-SK
Judge: Hon. John F. Walter
Mag. Judge: Steve Kim

**STIPULATED PROTECTIVE
ORDER**

Trial Date: May 7, 2024

1. A. PURPOSES AND LIMITATIONS

2
3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth
12 in Section 12.3 (Filing Protected Material), below, that this Stipulated Protective
13 Order does not entitle them to a file confidential information under seal; Civil Local
14 Rule 79-5 sets forth the procedures that must be followed and the standards that will
15 be applied when a party seeks permission from the court to file material under seal.
16

17 B. GOOD CAUSE STATEMENT
18

19 This action is likely to involve BMW's trade secrets or other proprietary
20 internal information. Such confidential and proprietary materials and information
21 consist of, among other things, confidential business or financial information,
22 information regarding confidential business practices, or other confidential research,
23 development, or commercial information (including information implicating
24 privacy rights of third parties), information otherwise generally unavailable to the
25 public, or which may be privileged or otherwise protected from disclosure under
26 state or federal statutes, court rules, case decisions, or common law. Accordingly,
27 to expedite the flow of information, to facilitate the prompt resolution of disputes
28 over confidentiality of discovery materials, to adequately protect information the

1 parties are entitled to keep confidential, to ensure that the parties are permitted
2 reasonable necessary uses of such material in preparation for and in the conduct of
3 trial, to address their handling at the end of the litigation, and serve the ends of
4 justice, a protective order for such information is justified in this matter. It is the
5 intent of the parties that information will not be designated as confidential for
6 tactical reasons and that nothing be so designated without a good faith belief that it
7 has been maintained in a confidential, non-public manner, and there is good cause
8 why it should not be part of the public record of this case.

9
10 2. DEFINITIONS

11 2.1 Action: this pending federal lawsuit

12 2.2 Challenging Party: a Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
15 how it is generated, stored, or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information
21 or items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced
26 or generated in disclosures or responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as

1 an expert witness or as a consultant in this Action.

2 2.8 House Counsel: attorneys who are employees of a party to this Action.
3 House Counsel does not include Outside Counsel of Record or any other outside
4 counsel.

5 2.9 Non-Party: any natural person, partnership, corporation, association,
6 or other legal entity not named as a Party to this action.

7 2.10 Outside Counsel of Record: attorneys who are not employees of a
8 party to this Action but are retained to represent or advise a party to this Action and
9 have appeared in this Action on behalf of that party or are affiliated with a law firm
10 which has appeared on behalf of that party, including support staff.

11 2.11 Party: any party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 2.13 Professional Vendors: persons or entities that provide litigation
17 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as "CONFIDENTIAL."

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24
25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only
27 Protected Material (as defined above), but also (1) any information copied or
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

5 4. DURATION

6 Once a case proceeds to trial, all of the information that was designated as
7 confidential or maintained pursuant to this protective order becomes public and will
8 be presumptively available to all members of the public, including the press, unless
9 compelling reasons supported by specific factual findings to proceed otherwise are
10 made to the trial judge in advance of the trial. See Kamakana v. City and County of
11 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
12 showing for sealing documents produced in discovery from “compelling reasons”
13 standard when merits-related documents are part of court record). Accordingly, the
14 terms of this protective order do not extend beyond the commencement of the trial.
15

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or Non-Party that designates information or items for protection under
19 this Order must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. The Designating Party must designate for
21 protection only those parts of material, documents, items, or oral or written
22 communications that qualify so that other portions of the material, documents,
23 items, or communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations
26 that are shown to be clearly unjustified or that have been made for an improper
27 purpose (e.g., to unnecessarily encumber the case development process or to impose
28 unnecessary expenses and burdens on other parties) may expose the Designating

1 Party to sanctions.

2 If it comes to a Designating Party's attention that information or items that it
3 designated for protection do not qualify for protection, that Designating Party must
4 promptly notify all other Parties that it is withdrawing the inapplicable designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in
6 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
7 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
8 under this Order must be clearly so designated before the material is disclosed or
9 produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic
12 documents, but excluding transcripts of depositions or other pretrial or trial
13 proceedings), that the Producing Party affix at a minimum, the legend
14 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
15 contains protected material. If only a portion or portions of the material on a page
16 qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins).

18 A Party or Non-Party that makes original documents available for
19 inspection need not designate them for protection until after the inspecting Party has
20 indicated which documents it would like copied and produced. During the
21 inspection and before the designation, all of the material made available for
22 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
23 identified the documents it wants copied and produced, the Producing Party must
24 determine which documents, or portions thereof, qualify for protection under this
25 Order. Then, before producing the specified documents, the Producing Party must
26 affix the "CONFIDENTIAL legend" to each page that contains Protected Material.
27 If only a portion or portions of the material on a page qualifies for protection, the
28 Producing Party also must clearly identify the protected portion(s) (e.g., by making

1 appropriate markings in the margins).

2 (b) for testimony given in depositions that the Designating Party identify
3 the Disclosure or Discovery Material on the record, before the close of the
4 deposition all protected testimony.

5 (c) for information produced in some form other than documentary and
6 for any other tangible items, that the Producing Party affix in a prominent place on
7 the exterior of the container or containers in which the information is stored the
8 legend "CONFIDENTIAL." If only a portion or portions of the information
9 warrants protection, the Producing Party, to the extent practicable, shall identify the
10 protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
12 failure to designate qualified information or items does not, standing alone, waive
13 the Designating Party's right to secure protection under this Order for such material.
14 Upon timely correction of a designation, the Receiving Party must make reasonable
15 efforts to assure that the material is treated in accordance with the provisions of this
16 Order.

17 18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court's
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party Shall initiate the dispute
23 resolution process under Civil Local Rule 37-1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding shall be
25 on the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
27 parties), may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it
2 is entitled under the Producing Party's designation until the Court rules on the
3 challenge.

4
5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that
7 is disclosed or produced by another Party or by a Non-Party in connection with
8 this Action only for prosecuting, defending, or attempting to settle this Action.
9 Such Protected Material may be disclosed only to the categories of persons and
10 under the conditions described in this Order. When the Action has been
11 terminated, a Receiving Party must comply with the provisions of Section 13 below
12 (FINAL DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at
14 a location and in a secure manner that ensures that access is limited to the
15 persons authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
17 otherwise ordered by the Court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this Action, as
21 well as employees of said Outside Counsel of Record to whom it is reasonably
22 necessary to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel) of
24 the Receiving Party to whom disclosure is reasonably necessary for this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this Action and who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) the Court and its personnel;

1 (e) court reporters and their staff;

2 (f) professional jury or trial consultants, mock jurors, and Professional
3 Vendors to whom disclosure is reasonably necessary for this Action and who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (g) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information;

7 (h) during their depositions, witnesses, and attorneys for witnesses, in
8 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
9 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
10 they will not be permitted to keep any confidential information unless they sign the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
12 agreed by the Designating Party or ordered by the Court. Pages of transcribed
13 deposition testimony or exhibits to depositions that reveal Protected Material may
14 be separately bound by the court reporter and may not be disclosed to anyone except
15 as permitted under this Stipulated Protective Order; and

16 (i) any mediator or settlement officer, and their supporting personnel,
17 mutually agreed upon by any of the parties engaged in settlement discussions.

18
19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
20 IN OTHER LITIGATION

21 If a Party is served with a subpoena or a court order issued in other litigation
22 that compels disclosure of any information or items designated in this Action as
23 “CONFIDENTIAL,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such notification
25 shall include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order
27 to issue in the other litigation that some or all of the material covered by the
28 subpoena or order is subject to this Protective Order. Such notification shall include

1 a copy of this Stipulated Protective Order; and

2 (c) cooperate with respect to all reasonable procedures sought to be
3 pursued by the Designating Party whose Protected Material may be affected.

4 If the Designating Party timely seeks a protective order, the Party served with
5 the subpoena or court order shall not produce any information designated in this
6 action as “CONFIDENTIAL” before a determination by the court from which the
7 subpoena or order issued, unless the Party has obtained the Designating Party’s
8 permission. The Designating Party shall bear the burden and expense of seeking
9 protection in that court of its confidential material, and nothing in these provisions
10 should be construed as authorizing or encouraging a Receiving Party in this Action
11 to disobey a lawful directive from another court.

12
13 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
14 PRODUCED IN THIS LITIGATION

15 (a) The terms of this Order are applicable to information produced by a
16 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
17 produced by Non-Parties in connection with this litigation is protected by the
18 remedies and relief provided by this Order. Nothing in these provisions should be
19 construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to
21 produce a Non-Party’s confidential information in its possession, and the Party is
22 subject to an agreement with the Non-Party not to produce the Non-Party’s
23 confidential information, then the Party shall:

24 (1) promptly notify in writing the Requesting Party and the Non-Party
25 that some or all of the information requested is subject to a confidentiality agreement
26 with a Non-Party;

27 (2) promptly provide the Non-Party with a copy of the Stipulated
28 Protective Order in this Action, the relevant discovery request(s), and a reasonably

1 specific description of the information requested; and

2 (3) make the information requested available for inspection by the Non-
3 Party, if requested.

4 (c) If the Non-Party fails to seek a protective order from this Court within
5 14 days of receiving the notice and accompanying information, the Receiving Party
6 may produce the Non-Party's confidential information responsive to the discovery
7 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
8 not produce any information in its possession or control that is subject to the
9 confidentiality agreement with the Non-Party before a determination by the Court.
10 Absent a court order to the contrary, the Non-Party shall bear the burden and
11 expense of seeking protection in this Court of its Protected Material.

12 13 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this
16 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
17 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
18 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
19 or persons to whom unauthorized disclosures were made of all the terms of this
20 Order, and (d) request such person or persons to execute the "Acknowledgment and
21 Agreement to Be Bound" that is attached hereto as Exhibit A.

22 23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 24 PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever

1 procedure may be established in an e-discovery order that provides for production
2 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
3 (e), insofar as the parties reach an agreement on the effect of disclosure of a
4 communication or information covered by the attorney-client privilege or work
5 product protection, the parties may incorporate their agreement in the stipulated
6 protective order submitted to the Court.

7
8 12. MISCELLANEOUS

9 12.1 Right to Relief. Nothing in this Order abridges the right of any person
10 to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order, no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material
18 may only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise instructed by the court.

22 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in Section 4
24 (DURATION), within 60 days of a written request by the Designating Party, each
25 Receiving Party must return all Protected Material to the Producing Party or destroy
26 such material. As used in this subdivision, "all Protected Material" includes all
27 copies, abstracts, compilations, summaries, and any other format reproducing or
28 capturing any of the Protected Material. Whether the Protected Material is returned

1 or destroyed, the Receiving Party must submit a written certification to the
2 Producing Party (and, if not the same person or entity, to the Designating Party) by
3 the 60 day deadline that (1) identifies (by category, where appropriate) all the
4 Protected Material that was returned or destroyed; and (2) affirms that the Receiving
5 Party has not retained any copies, abstracts, compilations, summaries, or any other
6 format reproducing or capturing any of the Protected Material. Notwithstanding this
7 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
8 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
9 deposition and trial exhibits, expert reports, attorney work product, and consultant
10 and expert work product, even if such materials contain Protected Material. Any
11 such archival copies that contain or constitute Protected Material remain subject to
12 this Protective Order as set forth in Section 4 (DURATION).

13 14. Any violation of this Order may be punished by any and all appropriate
14 measures including, without limitation, contempt proceedings and/or
15 monetary sanctions.

16
17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18
19 Respectfully submitted,

20 Dated: August 30, 2023 **CALIFORNIA CONSUMER ATTORNEYS, P.C.**

21
22 

23 Michael H. Rosenstein, Esq.

24 Sepehr Daghighian, Esq.

25 Alastair F. Hamblin, Esq.

26 Attorneys for Plaintiff,

27 **MARTHA ROSARIO GARCIA VILLANUEVA**
28

1 Dated: August 30, 2023

CLARK HILL LLP

2 /s/ Georges A. Haddad

3 C. Brian Wagner

4 Georges A. Haddad

Attorneys for Defendant,

5 BMW OF NORTH AMERICA, LLC

6
7 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

8
9 DATED: September 1, 2023

10 

11 Honorable Steve Kim

12 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ in the case of Martha Rosario Garcia Villanueva v. BMW of North America, LLC (Case No. 2:22-cv-09415-JFW-SK). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____